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**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**



**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

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| CLIFFORD C. RUSSELL,<br>Plaintiff and Appellant,<br>v.<br>DEPARTMENT OF MOTOR VEHICLES,<br>Defendant and Respondent. | E061416<br>(Super.Ct.No. CIVDS1401825)<br>OPINION |

APPEAL from the Superior Court of San Bernardino County. David Cohn, Judge. Affirmed.

Law Office of Rodney Gould and Rodney Gould for Plaintiff and Appellant.

Kamala D. Harris, Attorney General, Alicia M. B. Fowler, Assistant Attorney General, and Kenneth C. Jones and Sarah M. Barnes, Deputy Attorneys General, for Defendant and Respondent.

Defendant and respondent Department of Motor Vehicles (DMV) suspended the driving privileges of plaintiff and appellant Clifford C. Russell after he was arrested for driving under the influence of alcohol and refused to submit to a chemical test. Plaintiff

brought a petition for writ of mandate challenging the suspension, contending that the traffic stop that led to his arrest was unlawful. The trial court found the stop to be lawful, and denied the petition. We affirm.

## I. FACTS AND PROCEDURAL BACKGROUND

On September 22, 2013, a Chino Police Department officer was dispatched to a reported disturbance at a private hanger located inside the Chino Municipal Airport. The original call to dispatch reported a pilot was intoxicated and wanting to fly a plane, and was becoming aggressive. As the officer arrived on scene, he received a second report from dispatch, informing him that the pilot was possibly leaving in a white vehicle. At the same time, the officer observed a vehicle matching that description travelling toward him, leaving the area of the private hanger.[1] He instigated a traffic stop to investigate.

When the officer approached the vehicle and contacted the driver—a male wearing a pilot's uniform who turned out to be defendant—the officer smelled a strong odor of alcohol. Plaintiff cooperated to a certain extent, willingly performing (but failing) three field sobriety tests. He refused, however, to submit to either a breath test or a blood test to measure his blood alcohol level. Plaintiff was then arrested on suspicion of driving under the influence of alcohol. (Veh. Code, § 23152, subds. (a) & (b).) He was also served with an "Administrative Per Se Suspension/Revocation Order and Temporary Driver License," (APS order). The APS order notified plaintiff that his

[1] The police report notes the location of the arrest as the same address as that of the private hanger, establishing that the officer stopped plaintiff there and not elsewhere in or near the airport.

driving privileges would be suspended, effective 30 days from the issue date of the APS order, and informed him of his right to challenge the suspension by requesting a hearing.

Plaintiff requested a hearing to review the suspension of his driving privileges, as allowed under the terms of the APS order and Vehicle Code, section 13558. (Veh. Code, § 13558, subd. (a) ["Any person, who has received a notice of an order of suspension or revocation of the person's privilege to operate a motor vehicle . . . may request a hearing on the matter . . . ."].) After a hearing, the hearing officer issued an order suspending plaintiff's driver's license for one year, finding among other things that the officer had a reasonable basis for stopping plaintiff to investigate whether he was driving under the influence.

On February 10, 2014, plaintiff filed in the trial court a petition for writ of mandate challenging the suspension. After a hearing on May 30, 2014, the trial court denied the petition. Judgment was entered on June 25, 2014.

Plaintiff subsequently filed a petition for writ of supersedeas in this court and requested an immediate stay of the trial court's decision; we denied that petition and request for stay on July 3, 2014.

## II. DISCUSSION

### A. Overview of Statutory Scheme and Standard of Review.

At an administrative hearing to review the suspension of a person's driver's license for refusal to submit to chemical testing, to confirm the suspension, the hearing officer must find to a preponderance of the evidence that (1) the law enforcement officer had "reasonable cause to believe that the person had been driving a motor vehicle in

violation of [one or more specified Vehicle Code sections]"; (2) the person was lawfully detained; (3) the person "refused or failed to complete the chemical test or tests after being requested by a peace officer"; and (4) the person was told that his driving privilege would be suspended or revoked if he or she refused to submit to, and complete, the required testing. (Veh. Code, § 13557, subd. (b)(1).) The DMV bears the burden of proof, and "[u]ntil the agency has met its burden of going forward with the evidence necessary to sustain a finding, the licensee has no duty to rebut the allegations or otherwise respond." (*Daniels v. Department of Motor Vehicles* (1983) 33 Cal.3d 532, 536.)

Evidentiary standards at an administrative hearing before the DMV are somewhat relaxed; it "does not require the full panoply of the Evidence Code provisions used in criminal and civil trials." (*Petricka v. Department of Motor Vehicles* (2001) 89 Cal.App.4th 1341, 1348 (*Petricka*).) In most respects, Government Code section 11513, which applies to administrative hearings generally, governs the admission of evidence. (*Lake v. Reed* (1997) 16 Cal.4th 448, 458.) Except as specifically provided, "[a]ny relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions. (Gov. Code, § 11513, subd. (c).)

The DMV's administrative decision to suspend a driver's license is subject to judicial review. (Veh. Code, § 13559.) "In ruling on [Russell's] petition for writ of mandate, the trial court was required to determine, by exercising its independent

judgment, whether the hearing officer's decision was supported by the weight of the evidence. [Citations.] 'When the trial court is authorized to exercise independent judgment on the evidence, on appeal [we] need only review the record to determine whether substantial evidence supports the trial court's findings. [Citations.]' [Citations.]" (*Baker v. Gourley* (2000) 81 Cal.App.4th 1167, 1172 [Fourth Dist., Div. Two].) We review de novo any pure questions of law raised by the appeal. (*Brierton v. Department of Motor Vehicles* (2005) 130 Cal.App.4th 499, 508.) The trial court's determination of reasonable suspicion is a mixed question of fact and law, which we review independently. (*Id.* at p. 509.)

**B. Analysis.**

Defendant contends the DMV failed to prove that he was lawfully detained, challenging the reliability of the tips that led to him being pulled over and subsequently arrested. We reject his arguments.

A peace officer "may stop and detain a motorist on reasonable suspicion that the driver has violated the law." (*People v. Wells* (2006) 38 Cal.4th 1078, 1082 (*Wells*).) "Reasonable suspicion is a lesser standard than probable cause, and can arise from less reliable information than required for probable cause, including an anonymous tip. [Citation.] But to be reasonable, the officer's suspicion must be supported by some specific, articulable facts that are 'reasonably "consistent with criminal activity."' [Citation.] The officer's subjective suspicion must be objectively reasonable, and 'an investigative stop or detention predicated on mere curiosity, rumor, or hunch is unlawful, even though the officer may be acting in complete good faith. [Citation.]' [Citation.]

But where a reasonable suspicion of criminal activity exists, 'the public rightfully expects a police officer to inquire into such circumstances "in the proper exercise of the officer's duties." [Citation.]' [Citation.]" (*Id.* at p. 1083.) "The California cases indicate that a citizen's tip may itself create a reasonable suspicion sufficient to justify a temporary vehicle stop or detention, especially if the circumstances are deemed exigent by reason of possible reckless driving or similar threats to public safety." (*Ibid.*) To determine whether a particular investigative stop was reasonable, we examine the totality of the circumstances. (*Ibid.*)

Here, the DMV came forward with evidence sufficient to show that the stop was predicated on specific, articulable facts that are reasonably consistent with criminal activity, not just an officer acting a hunch. The officer's report established that he stopped plaintiff because dispatch informed him that a person observed to be intoxicated and creating a disturbance may have been leaving the scene by driving a white car. The officer received this information just as he was arriving on scene, and at the same time he observed a white vehicle approaching him in the opposite direction. The facts available to the officer would "'warrant a man of reasonable caution in the belief'" that at least a brief investigative stop was appropriate. (*Terry v. Ohio* (1968) 392 U.S. 1, 21-22.)

Plaintiff questions the reliability of the tip on which the officer was acting in various respects. For example, he asserts that "there was no evidence in the record of the number of vehicles (cars or trucks) leaving the airport at that time, much less of how many were of white color." The officer's report, however, states that he observed "*a*

vehicle travelling toward [him]" (italics added), not that his attention focused on one vehicle out of many moving in the area.

Plaintiff also points out that the record does not disclose the exact time of the anonymous tips that led to his arrest. Nevertheless, we may infer from the present tense nature of the second dispatch—that the subject of the first dispatch may be *leaving* the scene driving a white vehicle—that the information had been received by police only minutes or seconds before it was relayed to the arresting officer, who at that moment observed a vehicle matching that description, and confirmed shortly thereafter that he had identified the correct vehicle. Even if we cannot place the exact time of the tip, we can place it in a narrow window, between when the officer was first dispatched to the scene, at approximately 7:45 p.m., and plaintiff's arrest, at 8:17 p.m., and specifically a few moments before the dispatched officer arrived on scene.

Plaintiff also argues that the DMV's evidentiary showing was insufficient, because the record is silent as to how exactly the police received the information that led to plaintiff's arrest, or who exactly made the tip, or how that person came by the information (for example, whether they personally observed the events at issue, or whether they were relaying information seen by another).[2] The case law on which he relies in support of this argument, however, is inapposite. *In re Eskiel S.* (1993) 15 Cal.App.4th 1638 found that, absent more, a radio broadcast identifying only the race of a

[2] Although the digital audio recordings related to the case—presumably recordings of calls made to the police either through the 911 system or another telephone line—were uploaded to the Chino Police Department database by the arresting officer, they were not introduced into evidence at the administrative hearing.

number of individuals involved in possible gang fight, one of whom was possibly armed, and only a general area as to their location, was insufficient to furnish reasonable suspicion to justify an arrest or detainment by an officer who did not personally observe criminal activity. (*Id.* at p. 1644 & fn. 2.) On that basis, the Court of Appeal held that a motion to suppress should have been granted. (*Id.* at pp. 1641, 1644-1645.) In our case, there was no motion to suppress at issue, and only the relaxed evidentiary rules of administrative hearings applied. (*Petricka*, *supra*, 89 Cal.App.4th at p. 1348.) Moreover, the information received by dispatch and relayed to the officer was rather more specific than the report at issue in *Eskiel S.*—a white car, leaving a specific location (the private hanger), being driven by a pilot who had been observed to be intoxicated. In any case, though police gathering of information regarding a tipster is to be encouraged, and the absence of such information "may be relevant in determining the totality of the circumstances in a given case," the lack of such evidence in the record is not necessarily "fatal to the subsequent vehicle stop." (*Wells*, *supra*, 38 Cal.4th at p. 1088.) We see no appropriate basis to deem it so in the circumstances of the present case.

Plaintiff asserts that the facts reported to the police in this case did not "report any criminal activity." Not so. To be sure, as plaintiff argues, the bare observation that someone is intoxicated does not alone provide a reasonable suspicion that the person is involved in criminal activity. But the observation that a person is intoxicated immediately prior to entering a vehicle, combined with the observation that the person subsequently is driving away from an area, does indeed provide reasonable suspicion of criminal activity, specifically, drunk driving. Plaintiff's suggestion to the contrary

notwithstanding, *Navarette v. California* (2014) 134 S.Ct. 1683, does not require a different conclusion. In *Navarette*, the United States Supreme Court distinguished between traffic infractions that do not imply intoxication and other driving behaviors that are "sound indicia of drunk driving." (*Id*. at pp. 1690-1691.) It also, however, endorsed the longstanding "commonsense approach" to determining reasonable suspicion. (*Ibid.*) As a matter of common sense, observation of driving behavior is not the only manner in which a reasonable suspicion of drunk driving may arise. The facts of this case provide a paradigmatic example.

In short, viewing the totality of the circumstances in the present case, we are convinced that the officer's traffic stop was justified by reasonable suspicion of criminal activity. The report to police that led to plaintiff's arrest provided contemporaneous information, with a sufficiently precise location and description of the suspect to give rise to reasonable suspicion of criminal activity, corroborated by the investigating officer within minutes. Plaintiff has raised no other claims of error, so it follows that the suspension of his driver's license was properly upheld by the DMV, and his petition challenging the suspension was properly denied by the trial court.

## III. DISPOSITION

The judgment is affirmed. Plaintiff shall pay DMV's costs on appeal.

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HOLLENHORST
J.

We concur:

RAMIREZ

P.J.

CODRINGTON

J.